



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

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SECRETARY

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for May 5, 2004**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held on May 5, 2004 at 8:30 AM in the Board Room (Room 150) of the Transportation Building. Nina Szlosberg chaired the meeting. Other Board of Transportation members that attended were:

Tom Betts	Doug Galyon
Conrad Burrell	Larry Helms
Mac Campbell	Andy Perkins
Bob Collier	Lanny Wilson
Nancy Dunn	

Other attendees included:

Bob Andrews	Berry Jenkins	David Robinson
Rob Ayers	Clark Jenkins	Bill Rosser
Debbie Barbour	Tim Johnson	Len Sanderson
Tad Boggs	Daniel Keel	Ruth Sappie
Clarence Coleman	Suzanne Klimek	Barb Satler
Greg Dean	Don Lee	Roger Sheats
Dan DeVane	Neil Lassiter	Roy Shelton
Steve DeWitt	Emily Lawton	Katie Snipes
C.A. Gardner	Sharon Lipscomb	Jim Stanfill
Bill Gilmore	April Little	John Sullivan
Lisa Glover	Robin M. Little	Jay Swain
Gail Grimes	Ehren Meister	Greg Thorpe
Rob Hanson	Art McMillan	Secretary Lyndo Tippett
Phil Harris	Mike Mills	Charles Tomlinson
Teresa Hart	Graham Moore	Don Voelker
Mike Holder	Michael Nelson	Marcus Wilner
Julie Hunkins	Benton Payne	Theresa Wyatt
Pat Ivey	Allen Pope	

Ms. Szlosberg called the meeting to order at 8:30 AM and accepted a motion to approve the meeting minutes from the March committee meeting as presented. Ms. Szlosberg recognized

former board member Senator Clark Jenkins who is the new Vice Chair of the Transportation Oversight Committee.

On April 28th the North Carolina Land Trust Council, which is a coalition of 23 local and regional land trust throughout the state, accomplished something historic. It awarded the Government Conservation Partner of the year award to Secretary Lyndo Tippet and Deputy Secretary Roger Sheats for the Ecosystem Enhancement Program. Ms. Szlosberg also noted a publication she received, which is called "Conserve North Carolina" -- a land trust publication that is distributed all over North Carolina as well as across the borders. An article about the Ecosystem Enhancement Program was included in this publication. She stated that everyone can now see the NC Department of Transportation's (NCDOT) commitment to the environment and be recognized for our work.

First on the agenda was update on the Ecosystem Enhancement Program (EEP). Ms. Szlosberg introduced Bill Gilmore, Director of the Ecosystem Enhancement Program. Mr. Gilmore introduced Suzanne Klimek and Jim Stanfill, a few of his staff that were present at the meeting. The outline for the presentation included program principles, high quality preservation and the biennial budget. The EEP is a combination of staff NCDOT's Office of Natural Environment and the Department of Environment and Natural Resources. Together they work to offset transportation project impacts through advanced mitigation. The strategy is based on (1) programmatic mitigation for anticipated future-year impacts, (2) watershed level mitigation to replace lost or degraded functions and (3) accelerated mitigation that will insure functionality of mitigation site prior to impacts occurring.

EEP's foundation is based on planning. A plan is being developed for each of the 52 watersheds throughout the state and enables the EEP to focus mitigation efforts towards the highest habitat and water quality benefits.

In 2001, permitting and mitigation process improvements began, and the EEP concept was developed. Partnerships were very important in the development of EEP. When the agencies came together to redesign the mitigation process, each of the partners' needs had to be addressed. These needs included: watershed planning, functional replacement, pro-active mitigation, and a single process for mitigation within an independent agency.

The partners agreed to:

- A two-year transition period was allowed in order to develop operating procedures, protocols and staffing, and recording systems.
- Use of high quality preservation for mitigation.
- Allow permitting of transportation projects to proceed based on preservation alone during transition as long as by the end of the transitional period the EEP complemented that with 1:1 restoration. Staff had time to refocus on restoration in the overlay of high quality preservation.
- Assist DOT with a means to use alternative mitigation methods.
- Allow preservation to be provided by large eco-regions. This is the first time the regulatory agencies have allowed mitigation from one geographic area of the state for another one, thus allowing more flexibility to acquire larger tracts more quickly.

The Department of Transportation set into motion an unparalleled national model for compensatory mitigation. The DOT also set the stage for addressing mitigation proactively to avoid delaying transportation projects and reconfirmed its commitment to environmental stewardship.

The High Quality preservation map showed the preservation needs of the within the eight Eco-regions of North Carolina. The map shown included the anticipated impacts for each of the 14 NCDOT divisions. Mr. Gilmore noted that mitigation within an Eco-region can be applied to anywhere within the same color-coded area of the map.

The High Quality preservation strategy is important because it:

- jump-starts the EEP program before restoration becomes available
- protects the natural system investment
- provides recyclable mitigation to meet future needs
- creates reservoirs of mitigation for future TIP projects
- will be used to offset nationwide permits

Examples of high quality preservation sites acquired by the EEP in North Carolina are:

- Great Coharie Swamp Southern Inner Coastal Plain Sampson (155,000 feet of streams and 4,000 acres of riverine wetlands).
- Allen Tract Central Piedmont Franklin (16,000 feet of streams and 26 acres of riverine wetlands).
- Mingo Tract Northern Mountains Caldwell and Wilkes (73,000 feet of streams and is now managed by Wildlife Resource Commission).
- Rankin Tracts Southern Piedmont Gaston (18,000 feet of streams).
- Haw River Tract Central Piedmont Chatham (32,000 feet of streams).
- Eno River Tracts Central Piedmont Orange (26,000 feet of streams).
- Needmore Tract Southern Mountain Macon and Swain (96,500 feet of streams. This project set the stage for the entire state).

The added benefits of preservation include:

- Protects investments on restoration.
- Increases open space.
- Improves quality of life.
- Protects high quality or rare natural communities.
- Protects water supplies protects rare species.

Laurie Smith of NCDOT's Cash Management Unit and other staff in the department have been working on the EEP biennial budget. It is the first time a biennial budget has been developed strictly for mitigation. The foundation consists of two working documents: (1) a three-party Memorandum of Agreement (MOA) between NCDOT, the NC Department of Environment and Natural Resources (DENR) and the US Army Corps of Engineers (USACE) and (2) a 2-party MOA between NCDOT and DENR. The 3-party MOA is a regulatory document which specifies how credits are handled and addresses mitigation and compliance requirements of the program. The 2-party MOA is a business document that sets procedures for business

management, accounting, invoicing, and progress reports. The biennial budget is required to be approved by the NCDOT. The EEP will present the biennial budget as a Transportation Improvement Program addition will be introduced to the Board of Transportation in June 2004 followed by a request for Board action in July 2004.

The breakdown of the biennial budget is:

- Operations - 6%
- Preservation 56%
- Planning 3%
- Restoration 35%.

The budget for two years is \$250 million.

Board Member Andrew Perkins wanted to know if it would serve as a mitigation bank. Mr. Gilmore responded yes, it can permit projects today with preservation and half of the preservation can then be re-used for future projects within the same Ecoregion.

Board Member Lanny Wilson wanted to know if Mr. Gilmore attended the meetings of the Clean Water Trust Fund. Mr. Gilmore said he did not but he has attended a few. Mr. Gilmore stated he has a good relationship with them and speaks with Bill Holman often. Mr. Wilson stated that the Clean Water Trust Fund would like NCDOT to attend and participate in more meetings and answer questions. Mr. Gilmore said that he would see that EEP attend the meetings.

Board Member Lanny Wilson wanted to know if credits were available to acquire from the Clean Water Trust Fund. Bill said yes and that it has been done once. They will discuss further.

Ms. Szlosberg noted that we are in transition and it is important to do restoration and creation on the back end.

Ms. Szlosberg then introduced Dave Henderson from the NCDOT's Hydraulics Unit. NCDOT was the first state department in the nation to be permitted in National Pollutant Discharge Elimination System (NPDES) Phase I, and has become a national model. There have been a few legal issues but NCDOT is in full compliance and licensed. Dave Henderson turned the floor over to Matt Lauffer, Project Engineer in the Hydraulics Unit.

Mr. Lauffer began by providing an overview of his presentation: stormwater management and why it is important, NPDES stormwater regulations (Phase I and Phase II) and the protection of NC surface waters, and NCDOT-NPDES compliance program.

Only 0.3% of the earth's water is available for use. 99.7% is tied up in the oceans, polar ice caps and underground areas. Clean water is important for recreation, tourism, and industry. As imperviousness increases in a watershed, water quality is degraded. Increased development, stormwater runoff, and pollutants decrease water quality. Water pollutants of concern occur in watersheds in the form of nutrients, pathogens, sediment, toxic contaminants, debris and thermal stress. Impairments cause health issues with algae blooms, fish kills, and beach closures. Federal and state regulations try to protect water resources. The NPDES program deals with

broader scaled measures and occurs in phases. The initial phase is based on changes in the Clean Water Act . Phase I is for municipalities greater than 100,000, and includes Charlotte, Raleigh, Durham and Winston-Salem. NCDOT's NPDES permit was issued around 1998. The permit covers roadways, construction, industrial facilities and borrow pits. In 2003, Phase II for municipalities greater than 10,000 became a requirement. Permit terms are five years. NCDOT has a Phase I permit and by law is not required to meet the Phase II regulations. DOT understands even though we are not required to meet Phase II regulations, we have to be compliant with those Phase II requirements.

The existing statewide permit (Phase I –Term I) became effective June 8, 1998 and went through May 31, 2003. We are currently still working under that permit. The Phase I-Term II permit application was submitted November 26, 2002 for a 5-year renewal. We are currently waiting permit approval and are moving forward.

The six minimum measures for Phase II requirements are:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Controls
- Post Construction Controls
- Pollution Protection- Good Housekeeping.

Additional NCDOT Phase I requirements meet all of those in addition to structural Best Management Practice (BMP) retrofits. Post construction requirements of significant concern to the NCDOT are being addressed in Phase I-Term II. Those being addressed are: control and treatment of first inch of runoff, removal 85% of total suspended soils, and no new discharges to increase SA waters. Mr. Lauffer explained that a linear roadway system differs from an urban environment. Urban environments have a network grid for the storm sewer system with a high concentration of pollutants. A linear system watershed moves along the corridor and distributes pollutants along the way. These things need to be considered as Phase I renewal is developed.

The Guiding Principles of NCDOT's compliance program are:

- 1) Comply with permit by managing, minimizing, and reducing storm water pollutants from roadways and industrial areas.
- 2) Develop programs that can be effectively managed, implemented and integrated into NCDOT.
- 3) Develop solutions that improve program delivery that are proactive, form partnerships, have technical merit and are fiscally responsible

The mission of the NCDOT is to provide a safe and integrated transportation system that enhances the state. We also need to keep the environmental stewardship policy in mind and conduct business in an environmentally responsible manner, maintaining commitment to the environment from the human and natural standpoint.

The performance structure is a partnership between the Hydraulics Unit and the Roadside Environmental Unit. The program affects the entire department. One of the major accomplishments of the first term was going to each of the 184 industrial facilities and producing documents that minimize management of pollutants. Certain practices, such as dumping, erosion, hazardous materials storage and containment issues and many more, were seen. A document was developed that required these facilities to be more compliant and track permits. This was accomplished with education, BMP structural and non-structural improvements, monitoring requirements and reporting. A web site was developed where you can go and see what each division is doing in completing the BMP's at that facility and how they are doing in their annual cycle. Another accomplishment was the building and construction of BMP retrofits to help improve water quality and to demonstrate how we can build better. An example is B-2531 over the Neuse River. The bridge deck and storm water system was improved through a combination of site selection, engineered design and quality control in construction, coupled with a device that will treat the first inch of runoff from the bridge. They have also developed some educational documents such as pamphlets. (Copies of these pamphlets were distributed to the committee). The Roadside Environmental Unit also developed a manual of Best Management Practices for construction and maintenance activities. In order for a program to be effective, there needs to be partnerships, proactive solutions that are fiscally responsible, thinking in context, and encouraging win-win programs.

Ms. Szlosberg wanted to know if there were any questions. Board Member Andrew Perkins wanted to know what are the top three things to do for Phase II. Matt responded we will not necessarily have to go to Phase II, but in the renewal of the permit, DENR may require additional activities. Andrew Perkins wanted to know when does DENR get involved in project. Debbie Barbour, Director of Pre-Construction, responded that the Division of Water Quality is a partner on our Merger teams. As such, they are engaged with us during the development of projects from the scoping phase through permitting and beyond.

Ms. Szlosberg stated the connection between Phase I and Phase II was important because the legislature in the short session will be taking up Phase II. While NCDOT is currently under Phase I, what happens in Phase II is very important and has a potentially large impact on NCDOT. She urged everyone to talk to his or her elected leadership and encourage them to understand the connection between Phase I, Phase II and the potential impact on NCDOT.

Dave Henderson added that many of Phase II aspects came out of local governments' ability to administer zoning, land use and construction permitting in their own jurisdictions.

On the record, Ms. Szlosberg wanted to commend the department on their efforts. She placed a memo in each the board members box regarding the controversy over the Outlying Landing Field in Washington County. Governor Easley and other members of elected leadership have been working with the military to find another solution to avoid impact of the proposed landing field on natural resources. While the Navy moved forward with the siting of the landing field, the Southern Environmental Law center filed suit against them. A few weeks ago Judge Boyle, Chief District Court judge, addressed NEPA and stated in his ruling that:

“By enacting NEPA and declaring a national environmental policy, Congress declared that Americans’ duty protect and preserve nature, as well as their right to a healthful environment, are equivalent to the duty to protect and preserve other rights and liberties implicit in American society...Through NEPA, Congress intended to provide nature and the environment with the kind of fairness which Americans have come to expect and rely on themselves when dealing with their Government through standards of due process under the laws of the United States...Nature lacks a voice with which to speak for itself. Recognizing this, Congress has charged under federal law that agencies listen to the interests of the environment.”

Ms. Szlosberg stated that for two years, we have been working on the environmental legacy of the Governor and Secretary to figure out ways to identify problems before they occur. Many projects are stuck because we were not doing the work on the front end and find problems on the back end. The effort to reorganize has started to bare fruit. One thing that has happened is the development of the High Quality Resource list and guidance -- an effort to map the important resources in the state and identify potential environmental issues before we get too far into projects. She added that the High Quality Resources list and guidance is important and will help us eliminate problems in the future.

Ms. Szlosberg turned podium over to Roger Sheats, Deputy Secretary for the Environment, Planning and Local Governmental Affairs. Mr. Sheats stated that this is the first of several discussions on this issue between now and the end of the year. The High Quality Resources Avoidance and Minimization Guidance is rooted in promises and commitments that began about 5 years ago. The work in earnest began two years ago in NCDOT, and other agencies have been engaged in developing the guidance. The USACE guidelines associated with the Clean Water Act are still in effect. Mr. Sheats read an excerpt from the guidance:

“NCDOT will enhance efforts to avoid aquatic High Quality Resources (HQR) during systems planning and the project development process. If the avoidance alternative is determined to be unreasonable due to costs, impacts to other resources, or does not meet the purpose and need of the project, then the procedures for minimization of impacts listed in these guidelines will be followed.”

This is a formal birthing of an avoidance strategy. Mr. Sheats stated that mitigation has caused 55% of projects to be gridlocked in the past. As a result, we started to make a commitment to minimization several years ago. This is the guidance document we want to use to ensure that the questions of avoidance are adequately addressed. The Transportation Planning Branch has already committed to following this guidance for the long-range comprehensive planning process.

Mr. Sheats described his first impression about this Aquatic High Quality Resources list, which includes:

- Rare Wetlands
- Unique Wetlands
- Rare Fish Species
- Critical Habitat Areas
- Primary Nursery Areas
- Inland Nursery Areas
- Essential Fish Habitat
- Outstanding and High Quality Waters
- Exceptional Functional Significance
- Wetlands and Waters with Occurrences of Threatened and Endangered Species
- Threatened and Endangered
- Rare Wetlands and Aquatic Plant Species
- Streams with Naturally Reproducing Trout Populations

The list was overwhelming when he first read the above list, but the second time he read it, he circled a different set of words:

- Listed
- Classified
- Identified
- Designated
- Federally Listed
- State Listed

Most of these resources are already protected by regulation in some form or another. What the guidance does is simple organize and formalize our avoidance efforts for these important resources. Mr. Sheats commented that this document is a forward progressive step to restructure how we deal with reality.

Board Member Lanny Wilson wanted to know what was the purpose of the document. Mr. Sheats commented that the document has one focal point instead of several and it puts all of the avoidance of high quality aquatic resources expectations in one place.

Board Member Lanny Wilson wanted to know if it could turn HQR's into Section 4(f). In addition, he wanted to know if a map exists with the resources on it. His perception is that everything east of I-95 is a HQR. Roger reviewed maps for Macon, Davidson and Bertie Counties. In the west, Macon County has HQRs and a mass of public lands. Much of the geography has been taken off the table for discussion. Davidson County is reflective of Piedmont area. There are not many HQRs left in this region. In the east, there are many wetlands, including a lot of riverine wetlands. The areas that are to be avoided show up as dots on the map.

Board Member Mac Campbell wanted to know if there will be a cost analysis on the HQR guidance and whether the guidance will result in possible delays on projects. Between now and November, the division engineers will comment on the guidance and their comments will be considered. Len Sanderson and Steve Varndoe are getting working on getting input from the various units within the Division of Highways. Mr. Sheats stated that he would like to keep the

document a guidance document instead of a policy document, which allows flexibility and what to do when cost is an issue. Board Member Mac Campbell had problems with the flexibility being on the document side and not construction. A cost analysis will not be done until everyone has agreed about which factors should be considered in terms of cost. Mr. Campbell requested to see the comments that are received from those who provide input.

Ms. Slosberg introduced Len Sanderson, State Highway Administrator, and asked him to make a few comments. He stated that the High Quality Resources guidance document is on target and is needed. Furthermore, the practitioners need guidance. The document outlines process, procedures, and project delivery. There are issues to discuss and cost considerations that need to be addressed when it is clear what HQR's are.

Ms. Szlosberg stated that this is not the last we will hear about this. Ms. Szlosberg said that when we talk about costs do not live in bubble. When we make decisions we have to realize that it affects the taxpayers and what the larger costs.

Ms. Szlosberg adjourned the meeting at 9:50 am. The next meeting for the Environmental Planning and Policy Committee is scheduled for Wednesday, June 2, 2004 at 8:30 AM in the Board Room (Room 150) of the Transportation Building.

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